



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

#### **Requestor Name and Address**

MEDI-PLUS PHARMACY  
PO BOX 546  
BARKER TX 77413

#### **Respondent Name**

TEXAS MUTUAL INSURANCE CO.

#### **Carrier's Austin Representative Box**

Box Number 54

#### **MFDR Tracking Number**

M4-11-0115-01

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary:** "According to **Texas Administrative Code (Rule 134.503)**, the maximum allowable reimbursement (MAR) for prescription drugs shall be the lesser of the provider's **usual and customary charge** for the same or similar services. The fees established by the following formulas based on the average wholesale price (AWP) determined by utilizing a national recognized pharmaceutical reimbursement system (e.g.: Medi-Span, "Price Alert"). Nevertheless, TDI's Fee Guideline is what Medi-Plus Pharmacy charges each of its prescription, and we do not accept Medicare, Third party, nor Network contract. However, Texas Mutual Insurance Company's calculations are different from this formula. We have not negotiated nor contracted with Texas Mutual's Pharmacy Benefit Manager, ScripNet, Inc. We, as a provider (pharmacy), are following **TDI TAC Rule (134.503)** to dispense drugs; 1) The medications are related to Workers' Compensation. 2) The medications are not over-the-counter medications (OTC). 3) These medications are prescribed and specified by Texas licensed Pain Management Doctors. 4) The bill use national drug code (NDC) number when billing for prescription drugs. (Using DWC Form-66). We have received denied EOB from Texas Mutual Insurance Company after requesting reconsideration for additional reimbursement that they had paid us less than what DWC fee guideline recommended. "Our pharmacy applied TDI TAC Rule (134.503) formula for reimbursement". But they denied for using Code -517, Labor code sec 413.043 and Texas Administrative Code 134.502. These sections do not have Pharmaceutical Reimbursement Methodology formula."

**Amount in Dispute:** \$114.31

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** "Using the best information available to it, Texas Mutual has established an educated estimate for the pharmacy's U&C charges to customers outside the workers' compensation system and paid Medi-Plus Pharmacy those amounts because such amounts were lower than the formula amount in Rule 134.503(a). Texas Mutual recognizes that the pharmacy's actual U&C charge may be different (higher or lower) than Texas Mutual's estimated value. However, Medi-Plus Pharmacy has never provided any information to substantiate that the amount it charged Texas Mutual was in fact the U&C price for the drugs at issue despite Texas Mutual's best evidence that it was not."

**Response Submitted by:** Texas Mutual Insurance Co., 6210 E. Hwy 290, Austin, TX 78723

## SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Ordered
January 29, 2010	HYDROCOD/APAP 10/325 TAB 90 UNITS	\$114.31	\$114.31
January 28, 2010	TIZANIDINE HCL 4 MG TABLET 120 UNITS		

## FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

### Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving a medical fee dispute.
2. Texas Labor Code §401.011(22) defines "health care provider" as a "health care facility" or "health care practitioner."
3. Texas Labor Code §401.011(19)(E) defines "health care" to include a prescription drug, medicine, or other remedy.
4. Texas Labor Code §401.011(20) defines "health care facility" as a hospital, emergency clinic, outpatient clinic, or other facility providing health care.
5. 28 Texas Administrative Code §134.503, adopted to be effective January 3, 2002; amended to be effective March 14, 2004, set out the reimbursement guidelines for pharmaceutical services applicable to this dispute and is the version used throughout this decision.
6. 28 Texas Administrative Code §133.20, titled *Medical Bill Submission by Health Care Provider*, sets out the billing requirements.
7. The services in dispute were reduced/denied by the respondent with the following reason codes: for dates of service:
  - W1 – Workers Compensation State Fee Schedule Adjustment.
  - 517 – Paid at est. U&C based on research, Labor Code Sec 413.043, and PFG, 28 Tex: Admin Code 134.503.
  - W4 – No additional reimbursement allowed after review of appeal/reconsideration.
  - 891 – No additional payment after reconsideration.

### Issues

1. Were all the services in dispute filed in the form and manner prescribed by the division?
2. Is Medi-Plus Pharmacy a health care provider?
3. Did the requestor establish the unusual and customary charge for the services in dispute?
4. Is the requestor entitled to additional reimbursement?

### Findings

1. This medical fee dispute was filed on September 10, 2010. The date of service in dispute is January 28, 2010; therefore, the requestor has met the requirements of 28 Texas Administrative Code §133.307(c) and the date of service is eligible for review.
2. Review of the documentation submitted finds that Medi-Plus Pharmacy, the requestor in this medical fee dispute, is the health care provider because it is a health care facility as defined by the Texas Labor Code.
3. As stated above, the health care provider is Medi-Plus Pharmacy. Medi-Plus Pharmacy submitted numerous examples of amounts billed to workers' compensation carriers other than the respondent. In its review of these billing examples, the division noted amounts billed for pharmaceuticals that were the same or similar to those in dispute, and whether the dates of service were reasonably near the dates of service in dispute. Comparison of the billing examples to the medical bills, or DWC-66 forms, for the services in dispute supports that Medi-Plus Pharmacy billed its usual and customary charges to Texas Mutual Insurance Company for

HYDROCOD/APAP 10/325 TAB (90 Units) and TIZANIDINE HCL 4 MG TABLET (120 Units), for date of service January 28, 2010.

4. 28 Texas Administrative Code §134.503(a) states that “The maximum allowable reimbursement (MAR) for prescription drugs shall be the lesser of:
- (1) The provider’s usual and customary charge for the same or similar service;
  - (2) The fees established by the following formulas based on the average wholesale price (AWP) determined by utilizing a nationally recognized pharmaceutical reimbursement system (e.g. Redbook, First Data Bank Services) in effect on the day the prescription drug is dispensed.
    - (A) Generic drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \$4.00 \text{ dispensing fee} = \text{MAR}$ ;
    - (B) Brand name drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \$4.00 \text{ dispensing fee} = \text{MAR}$ ;
    - (C) A compounding fee of \$15 per compound shall be added for compound drugs; or
  - (3) a negotiated or contract amount.

28 Texas Administrative Code §134.503(a)(1) is established by determining the provider’s usual and customary charge. Therefore, the billed amounts represent §134.503(a)(1) for each disputed drug.

The AWP formula described in 28 Texas Administrative Code §134.503(a)(2) is based on the average wholesale price determined by a nationally recognized pharmaceutical reimbursement system. Medi-Plus Pharmacy provided documentation in its request for dispute resolution to support that it utilized Medi-Span AWP’s, specific by NDC, to calculate the disputed pharmaceutical’s AWP formula amounts. The respondent did not provide documentation to sufficiently support that it calculated its own AWP formula amount, nor did it submit information regarding what, if any, nationally recognized pharmaceutical reimbursement system it may have used to calculate §134.503(a)(2). Consequently, the AWP’s supported by Medi-Plus Pharmacy are appropriate for calculating the AWP formula pursuant to §134.503(a)(2).

28 Texas Administrative Code §134.503(a)(3) is described as a “negotiated or contract amount.” Documentation submitted by both the requestor and respondent supports that no contract exists between Texas Mutual Insurance Company and Medi-Plus Pharmacy.

The maximum allowable reimbursement (MAR) is therefore determined by establishing the lesser of §§134.503(a)(1) and (a)(2) as follows:

Dates of Service	Prescription Drug	§134.503 (a) (1)	§134.503 (a) (2)	MAR is lesser of (a)(1) and (a)(2)	Carrier Paid	Due
January 28, 2010	HYDROCODONE 00591085305	\$79.90	$((0.67457 \times 90) \times 1.25) + \$4 = \$79.89$	\$79.89	\$49.03	\$30.86
January 28, 2010	TIZANIDINE HCL 60505025203	\$223.76	$((1.46507 \times 120) \times 1.25) + \$4 = \$223.76$	\$223.76	\$135.36	\$88.40
<b>TOTALS</b>				<b>\$303.65</b>	<b>\$184.39</b>	<b>\$119.26</b>

The total allowable for the services in dispute is \$303.65. The respondent paid a total of \$184.39; therefore the requestor asked for and is entitled to additional reimbursement in the amount of \$114.31.

### **Conclusion**

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$114.31.

## **ORDER**

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §§413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor, within 30 days of receipt of this Order, the amount of \$114.31 plus applicable accrued interest pursuant to 28 Texas Administrative Code §134.130.

### **Authorized Signature**

_____	_____	March 6, 2012
Signature	Medical Fee Dispute Resolution Officer	Date

### ***YOUR RIGHT TO REQUEST AN APPEAL***

Either party to this medical fee dispute has a right to request an appeal. A request for hearing must be in writing and it must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a certificate of service demonstrating that the request has been sent to the other party.**

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**